IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

ESTATE DUTY REFERENCE No 4 of 1994

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.SHAH

and

Hon'ble MR.JUSTICE K.A.PUJ

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? :

CONTROLLER OF ESTATE DUTY

Versus

KAMLABEN SUBODHCHANDRA A P OF LATE KIRANCHANDRA S.

Appearance:

MR TANVISH U BHATT for Petitioner.

NOTICE SERVED for Respondent.

CORAM : MR.JUSTICE M.S.SHAH

and

MR.JUSTICE K.A.PUJ

Date of decision: 10/07/2002

ORAL JUDGEMENT

(Per : MR.JUSTICE M.S.SHAH)

In this Reference at the instance of the Revenue, the following questions are referred for our opinion under Section 64 of the Estate Duty Act, 1953 :

1. "Whether the Tribunal is right in law and on facts in holding that a deduction of Rs. 1,50,000/- in marriage expenses of three unmarried daughters be allowed out of the property of the deceased ?

2. Whether the Tribunal is right in law and on facts in holding that while giving exemption u/s. 33(1)(n) in respect of house property included in the value of the estate one has to assume as if the house happened to come to the share of the deceased on a fictional partition of the HUF before the date of the death and in allowing exemption of Rs. 1,00,000 instead of to the extent of the share of the deceased the house property ?"

2. The facts leading to this Reference, as found by the Tribunal, are as under :

Shri Kiranchandra Subodhchandra of Ahmedabad died on 28.5.80 at the age of 37 years. The estate duty account was filed by the Accountable Person (AP) on 13.2.81 showing principal value of the estate at Rs. 7,77,070/-. The estate of the deceased consisted of individual estate as well as share from the estate of the HUF.

3. In original estate duty account, the AP had claimed Rs. 50,000 being provision made for marriage expenses of three unmarried daughters of the deceased. During the course of assessment proceedings, these expenses were claimed at Rs. 1,50,000 at Rs. 50,000 per marriage of each of unmarried daughters. The first Asstt. Controller of Estate Duty (ACED), Ahmedabad rejected the said claim by observing that obligation was that of the deceased and was not a charge on the share of the deceased in the HUF property of the deceased. He relied on the decision reported in 112 ITR 739 and 145 ITR 220.

4. The AP had shown the value of residential house situated at Shahibaug at Rs. 1,01,262 on the basis of approved valuer's report. The correct value was,

however, adopted at Rs. 1,33,266/-. He had claimed Rs. 1,00,000 as exempt u/s. 33(1)(n) of the Act out of the value of self occupied property belonging to the HUF. The first ACED rejected the full claim of the assessee holding that exemption was available to the extent of share of the deceased in the HUF or Rs. 1 lakh whichever is less. The deceased's share of 1/5th in the property of the HUF being Rs. 22,211/-, the exemption u/s. 33(1)(n) was granted to the extent of Rs. 22,211/-. Accordingly, the final assessment order was passed on 27.2.1986 on net principal value of the estate of Rs. 8,39,907/-. In appeal preferred by the AP, the Appellate Controller of Estate Duty (ACED), Ahmedabad accepted the claim of maintenance of marriage of three unmarried daughters totalling to Rs. 1,50,000 and directed the first ACED to grant the said deduction from the HUF estate. Similarly, the claim of exemption u/s. 33(1)(n) was granted to the full extent of Rs. 1,00,000/-. Aggrieved by the aforesaid order, the Revenue preferred an appeal before the Tribunal. The Tribunal confirmed the findings of the Appellate Controller on both the issues. Hence, this Reference at the instance of the Revenue.

5. We have heard Mr. Tanvish Bhatt, learned Standing Counsel for the Revenue. Though served, none appears for the respondent-assessee.

6. As regards the first question, Mr. Bhatt has submitted that the Tribunal had relied on the decision of the Madras High Court in Controller of Estate Duty, Madras v. Dr. B. Kamalamma (1984) 148 ITR 434, but the Allahabad High Court and subsequently the Madras High Court have taken the view in favour of the revenue that the marriage expenses can be deducted from the estate of the deceased, only if there is a legal charge on the property of the deceased or on the share of the deceased in the HUF property which passed at the time of death of the deceased. Strong reliance is placed on the decision of the Madras High Court in Smt. K.N. Sita Vs. Controller of Estate Duty 239 ITR 108 and Allahabad High Court in Rajkumar Goyal vs. Controller of Estate Duty, 251 ITR 501. Support is also sought to be taken from the decision of the Apex Court in P. Leelavathamma vs. Controller of Estate Duty 188 ITR 803.

7. Having heard the learned counsel for the Revenue and having gone through the aforesaid decisions, we are of the view that if at all it was necessary to decide the controversy, the reasoning of the Madras High Court in CED Vs. Dr. B. Kamalamma (1984) 148 ITR 434 commends

to us. In the said decision, the Madras High Court made the following pertinent observations :

> "A girl born in a Hindu family is entitled to look to the family property for defraying the expenses for her marriage and she can enforce the right against the family property. This right arises from her membership in the joint family and from her inherent right in the family property as an unmarried daughter. The liability of the family property in this regard is independent of the father's personal obligation to get the daughter married. The statutory provisions under the Hindu Adoptions and Maintenance Act, 1956, providing for the obligation of a Hindu father to perform and spend for the marriage of his unmarried daughter do not affect the daughter's independent right under her personal law to render ancestral property liable for her maintenance and marriage. The provision for the marriage of unmarried daughters in a Hindu family being enforceable against ancestral property, it has got to be deducted as a debt or encumbrance under s. 44 of the E.D. Act, 1953, wherever the dutiable estate includes ancestral property of the deceased. Consequently, the liability of the ancestral or coparcenary property of a Hindu to pay for the marriage expenses of unmarried daughters in the family would be a proper debt deductible under the general provisions of s. 44, where the deceased died possessed of such property. This liability does not fall under any of the special categories covered by cls. (a) to (d) of s. 44 and is not subject to the limitations contained therein."

8. As against the aforesaid view, in a subsequent decision in Smt.K.N. Sita vs. CED (1989) 239 ITR 108, the Madras High Court has held the aforesaid view in Dr. B. Kamalamma's case as per incuriam on the ground that it was rendered without adverting to all the relevant statutory provisions and that the right of a daughter to claim maintenance which is a statutory right would include the right of reasonable marriage expenses and such a claim under the Act can be enforced but it is only after a charge is created by the award of maintenance that the estate can be said to be encumbered.

That decision, however, does not in our respectful view, upturn the reasoning in Dr. B.

Kamalamma's case (Supra) that the liability of the ancestral or coparcenary property of a Hindu to pay for the marriage expenses of unmarried daughters in the family would be a proper debt deductible under the general provisions of Section 44, where the deceased died possessed of such property and that this liability does not fall under any of the special categories covered by Clauses (a) to (d) of Section 44 and is not subject to the limitations contained therein.

9. The case in P. Leelavathamma 188 ITR 803 dealt with the case of a wife who was claiming her personal right of maintenance against her husband, under the Hindu Adoption and Maintenance Act, 1956, but had no charge on the property of the deceased, which, in any case, was not ancestral property of the deceased.

On the other hand, in the facts of the present case, the daughters claimed their personal law right to get marriage expenses out of the ancestral properties of the deceased.

10. As far as the decision of the Allahabad High Court in the case of Rajkumar Goyal (Supra) is concerned, that decision proceeded on the facts of that case which also indicate the basis of the decision. In the facts of that case, the Court held that the daughters succeeded to the estate of the deceased as heirs of class I by virtue of Section 8 of the Hindu Succession Act and they became the owners of the properties so inherited and there was nothing to show that the property so inherited by them was insufficient to meet the expenses of their marriage, and therefore the estimated marriage expenses of the two unmarried daughters were not allowed as a deduction in determining the value of the estate of the deceased.

Now, in the facts of the present case, there is nothing on record to show as to whether the deceased had made any Will or whether the deceased died intestate in which case the daughters would have inherited, along with other sharers in class I, the properties left by the deceased.

11. At this stage, Mr. Tanvish Bhatt, ld. counsel for the Revenue has submitted that the matter may be remanded to the Assistant Controller of Estate Duty to make proper inquiries in the matter and to give his finding as to whether the properties were inherited by the daughters and whether they were sufficient to meet the expenses of their marriage. However, we are not inclined to accept the above request. Apart from the

fact that this Reference has been pending before this Court since 1994, the Estate Duty Act, 1953 itself has been repealed w.e.f. 15-6-1985. For these reasons, we are not inclined to remand the matter to the Assistant Controller of Estate Duty for holding any inquiry.

12. For the aforesaid reasons, our answer to question No.1 is in the affirmative, that is in favour of the Accountable Person and against the Revenue.

13. Coming to question No.2, the controversy arises from the view taken by the revenue that since the value of the property at Shahibaug which was occupied by the deceased at the time of death was Rs. 1,33,266/-, and the deceased had 1/5th share in the property of the HUF, his share would work out to Rs. 22,211/- and therefore the exemption under Section 33(1)(n) would be confined to the said amount of Rs. 22,211/- as the statutory exemption was the value of the interest of the deceased in the residential house or an amount of Rs. 1,00,000/whichever was lower.

Mr. Bhatt for the Revenue has, therefore, submitted that the Appellate Controller of Estate Duty as well as the Tribunal had erred in granting exemption to the extent of Rs. 1,00,000/- under Section 33(1)(n) out of the value of the self-occupied property belonging to the HUF. Strong reliance is placed on the decision of the Punjab and Haryana High Court in Controller of Estate Duty v. Kismat Rai Khanna 234 ITR 179 and the decision of the Patna High Court in Controller of Estate Duty v. P.K. Agarwalla 169 ITR 699.

14. The Tribunal, however, relied on the Full Bench decision of the Andhra Pradesh High Court in K. Venugopal vs. CED 143 ITR 988 and accepted the assessee's case that at the time of fictional or notional partition immediately prior to the death of the deceased, the entire residential house occupied by the deceased could have gone to the share of the deceased and, therefore, it was open to the Accountable Person to claim exemption of Rs. 1,00,000/- under Section 33(1)(n) when the value of the property was Rs. 1,33,266/-.

The Tribunal adopted the following reasoning which had appealed to the Appellate Controller for holding in favour of the Accountable Person that the exemption of Rs. 1,00,000/was allowable under Section 33(1)(n) of the Act.

"Regarding the claim of exemption in respect of the residential property included in the estate of bigger HUF I find that the interpretation of section 33(1)(n), 34(1)(c) and 39 arising out of harmonious construction of all the three makes it clear particularly after going through the judgment cited by the appellant in this behalf, that while giving exemption under section 33(1)(n) in respect of the house property included in the value of the estate one has to assume as if the house happened to come to the share of the deceased on a fictional partition before the date of death. Therefore, exemption of Rs. 1 lakh in respect of the house property claimed by the appellant is admissible and the ACED is directed to grant it."

15. The Tribunal accepted the aforesaid reasoning, and we find no infirmity in the approach of the Tribunal. Admittedly, the HUF had a number of immovable properties including the self-occupied property at Shahibaug valued at Rs. 1,33,266/=. The other immovable properties were valued at Rs. 3,20,176/-. The HUF also had other movable properties and deposits and jewellary and therefore it was not impossible that the entire self-occupied property at Shahibaug in question would have gone to the share of the deceased. In this factual background, there is no reason to interfere with the concurrent findings given by the Appellate Controller of Estate Duty and the Tribunal that at the time of fictional or notional partition immediately prior to the death of the deceased, the self-occupied property would have gone to the share of the deceased and therefore the exemption of Rs. 1,00,000/- was available to the estate of the deceased under Section 33(1)(n) of the Act.

16. As regards the decision of the Supreme Court in Assistant Controller of Estate Duty vs. V. Devaki Ammal [1995] 212 ITR 395, that was a case where the Apex Court was concerned with the provisions of Section 34(1)(c) of the Estate Duty Act providing for aggregation of interests in joint family of the lineal descendants of the deceased, in the case of the passing of the deceased's interest in the joint family property, only for the purpose of determining the rate of duty on the property passing. The Apex Court held the provisions to be constitutional and not violative of Article 14 of the Constitution. The Apex Court was not concerned with the fact situation arising in the present case.

17. In view of the above discussion, our answer to question No.2 is also in the affirmative, that is in favour of the Accountable Person and against the Revenue.

18. The Reference, accordingly, stands disposed of with no order as to costs.

[M.S. Shah, J.]

rmr. [K.A. Puj, J.]